

Montana Water Court
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FILED
05/10/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0858-R-2022
Nordlund, Julia
6.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Lori M. Davis; Micky Davis; Eco-Camp LLC;
Vera Evanson; Michael J. Lilly; Raelee L. Lilly;
Caroline Phillips

CASE 41H-0858-R-2022
41H 101186-00

NOTICE OF INTENT TO APPEAR: Four Corners County
Water & Sewer District; State of Montana
University System

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 41H 101186-00 is owned by Lori Davis, Micky Davis, Eco-Camp LLC, Vera Evanson, Michael Lilly, Raelee Lilly, and Caroline Phillips. The claim appeared in the Preliminary Decree for Basin 41H with DNRC issue remarks and were consolidated into Water Court Case 41H-0858-R-2022.

FINDINGS OF FACT

1. Claim 41H 101186-00 received the following DNRC issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 129.00 ACRES IRRIGATED.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

2. On January 4, 2023, DNRC Water Resource Specialist Kara Huyser filed a Memorandum including her review of the issue remarks. Ms. Huyser indicated that Claimant contacted her and agreed with her resolution of issue remarks.

3. Ms. Huyser indicated that in her review of the aerial photos and maps, the place of use should be reduced to 129 acres as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	64.00		S2SW	26	2S	4E	GALLATIN
2	65.00		N2NW	35	2S	4E	GALLATIN
Total: 129.00							

4. Ms. Huyser stated the volume and flow rate remarks are also resolved.
5. The flow rate should remain as is and the volume should be replaced with the information remark stating: VF009 THE TOTAL VOLUME OF THE RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
6. The information provided resolves all issue remarks in this case.
7. No other claimant participated in the issue remark resolution or responded

to the recommendations so the Court set a deadline for Claimants Lori and Micky Davis, Eco-Camp LLC, Vera Evanson, and Raelee Lilly, and NOIA parties to respond to the DNRC recommendations.

8. On April 3, 2023, NOIA parties responded and stated they agree with the corrections identified in the DNRC Memorandum.

9. No other parties responded.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

5. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Note: Service List Updated 3-1-23

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 101186-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CAROLINE PHILLIPS
PO BOX 166
GALLATIN GATEWAY, MT 59730 0166

MICHAEL J LILLY
PO BOX 6055
BOZEMAN, MT 59771

RAELEE L LILLY
1 W MAIN ST
BOZEMAN, MT 59715 4642

VERA EVANSON
268 LEONARDS RD
BOULDER, CO 80302 9780

MICKY DAVIS
55 AXTELL-ANCENY RD
BOZEMAN, MT 59715

LORI M DAVIS
55 AXTELL ANCENY RD
BOZEMAN, MT 59715

ECO-CAMP LLC
102 N BROADWAY AVE
BOZEMAN, MT 59715 3893

Priority Date: MAY 1, 1867

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.35 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 129.00

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNW	2	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: ALLISON-LEWIS DITCH

Period of Use: MAY 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	64.00		S2SW	26	2S	4E	GALLATIN
2	65.00		N2NW	35	2S	4E	GALLATIN
Total:	<u>129.00</u>						